

Decision _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Pacific Gas and Electric Company
(U 39 E) for a Certificate of Public Convenience
and Necessity Authorizing the Construction of
the Northeast San Jose Reinforcement Project.

Application 99-09-029
(Filed September 9, 1999)

O P I N I O N

This decision awards Aglet Consumer Alliance (Aglet) \$23,612.22 in compensation for contributions to Decision (D.) 01-05-059 and \$5,933.61 for contributions to a later supplemental order, D.01-12-017.

1. Background

In this application, Pacific Gas and Electric Company (PG&E) sought approval of a Northeast San Jose electric transmission line project. In D.01-05-059, the Commission approved a transmission line route that its Environmental Impact Report found to be environmentally superior, directing PG&E to submit updated cost information for the route and substation location the Commission had selected. Hearings on the revised data were conducted in September 2001 and the Commission issued D.01-12-017 approving the Northeast San Jose project and imposing a \$147.5 million cap on claimed costs.

A prehearing conference in the initial proceeding was conducted on July 17, 2000. On August 16, 2000, Aglet filed a timely notice of intent (NOI) to claim compensation. PG&E opposed Aglet's participation as duplicative and unplanned. On September 22, 2000, ALJ Thomas issued a ruling in which she

found that Aglet is a customer as defined in Pub. Util. Code § 1802(b), had established significant financial hardship, and had met the requirements for eligibility to seek an award of compensation.

Aglet's Director James Weil participated in the hearings and argument that led to D.01-05-059. Aglet served testimony, cross-examined witnesses, presented closing argument, and filed briefs and comments. The Commission approved D.01-09-059 on May 14, 2001. The decision certified an environmental impact report and granted approval for the project but changed the transmission line route and ordered filing of updated costs.

During August, September and October 2001, Aglet conducted discovery, cross-examined PG&E witnesses, presented closing argument, and filed briefs and comments in the phase of the proceeding that led to D.01-12-017. Aglet states that its participation in this phase was not extensive, but it required 20.9 hours of professional time.

2. Requirements for Awards of Compensation

Intervenors who seek compensation for their contributions in Commission proceedings must file requests for compensation pursuant to Pub. Util. Code §§ 1801-1812. Pub. Util. Code § 1804(a) requires an intervenor to file an NOI within 30 days of the prehearing conference or by a date established by the Commission. Aglet timely filed its NOI. Other code sections address requests for compensation filed after a Commission decision is issued. Section 1804(c) requires an intervenor requesting compensation to provide "a detailed description of services and expenditures and a description of the customer's substantial contribution to the hearing or proceeding." Section 1802(h) states that "substantial contribution" means that,

“in the judgment of the commission, the customer’s presentation has substantially assisted the commission in the making of its order or decision because the order or decision has adopted in whole or in part one or more factual contentions, legal contentions, or specific policy or procedural recommendations presented by the customer. Where the customer’s participation has resulted in a substantial contribution, even if the decision adopts that customer’s contention or recommendations only in part, the commission may award the customer compensation for all reasonable advocate’s fees, reasonable expert fees, and other reasonable costs incurred by the customer in preparing or presenting that contention or recommendation.”

Section 1804(e) requires the Commission to issue a decision that determines whether or not the customer has made a substantial contribution and the amount of compensation to be paid. The level of compensation must take into account the market rate paid to people with comparable training and experience who offer similar services, consistent with § 1806.

3. Contributions to Resolution of Issues

A party may make a substantial contribution to a decision in various ways. It may offer a factual or legal contention upon which the Commission relied in making a decision. It may advance a specific policy or procedural recommendation that the Commission adopted. A substantial contribution includes evidence or argument that supports part of the decision even if the Commission does not adopt a party’s position in total.

In this proceeding, Aglet agreed with PG&E that additional transmission capacity is need in the San Jose area, but Aglet argued that PG&E had not justified the need for the specific facilities and route that it recommended.

3.1 Need for the Project

PG&E claimed that the Commission must defer to the judgment of the California Independent System Operator (ISO) regarding need. The Office of Ratepayer Advocates (ORA) argued that PG&E had not demonstrated a need for the project. Aglet argued that the Commission should make an independent review of project need, cost effectiveness, route selection, substation and other issues. Aglet stated that review by the ISO was limited in scope and that the ISO engineer assigned to review the project had previously worked on the project as a PG&E employee. In D.01-05-059, the Commission determined that the project is needed but that the Commission should not defer entirely to the ISO on the issue. In large part, the Commission adopted Aglet's position regarding need.

Because other parties also agreed that some form of transmission project was needed, Aglet has reduced its compensation request by 20% of its time allocated to this issue.

3.2 Costs and Cost Effectiveness

The focus of Aglet's work was project costs and cost effectiveness. Through cross-examination, briefs and comments, Aglet argued that PG&E's cost showing was "horribly inadequate." (Aglet opening brief, at 5.) The Commission agreed. The decision stated that PG&E's cost estimates lacked detail "as several intervenors pointed out." The Commission found that PG&E's cost justification was inadequate, citing the "chorus of voices" challenging PG&E's showing. Aglet believes that it made a substantial contribution to resolution of cost issues.

3.3 Cost Cap

Aglet, along with ORA, supported imposition of a cost cap as a necessary element of granting authority for the project. Citing Pub. Util. Code § 1005.5, Aglet argued that the law requires a cap, and that the cap provides ratepayers with some protection against runaway costs. PG&E argued that setting of any cost cap would intrude on the ratemaking authority of the Federal Energy Regulatory Commission (FERC). In D.01-05-059, the Commission concluded that it has authority to cap project costs, and that the cost cap will provide useful information to take into future ratesetting proceedings at FERC.

3.4 Other Issues

The Commission did not address three other issues raised by Aglet: piecemeal planning of transmission projects in the San Jose area, the balance of environmental and cost issues, and minor corrections and revisions. However, in response to Aglet comments, D.01-05-059 did revise language on the impact of the project on property values. Aglet states that because it made only a limited contribution to these issues, it has reduced its compensation request by 80% for time allocated to them.

3.5 Contributions to D.01-12-017

In D.01-12-017, the Commission adopted a cost cap that is \$35.4 million lower than the amount that PG&E requested. Approximately \$5.4 million of the disallowance derives from reduced contingency factors. Aglet introduced this issue and helped develop a full record. Aglet also successfully opposed several motions by PG&E on procedural grounds, and Aglet proposed three substantive revisions to the proposed decision, two of which were adopted in D.01-12-017.

Aglet has demonstrated that it made a substantial contribution to the Commission's decisions in D.01-05-059 and D.01-12-017. Aglet's help in developing a full record assisted the Commission in substantially reducing PG&E's proposed cost cap. Ratepayers may also benefit from introduction of the cost cap in a future FERC ratesetting proceeding.

4. The Reasonableness of Requested Compensation

Aglet requests compensation of \$23,612.22 for contributions to D.01-05-059, and \$5,933.61 for contributions to D.01-12-017. The requests are unopposed.

Documentation attached to the requests shows the following compilations:

D.01-05-059

Weil:

| | |
|--------------------|-------------|
| 79.7 hours @ \$220 | \$17,534.00 |
| 47.4 hours @ \$110 | 5,214.00 |

Other:

| | |
|-------------------------|----------|
| Copies | \$158.36 |
| Postage, FAX | 153.59 |
| Parking, tolls, mileage | 552.27 |

| | |
|---------------|---------------------------|
| Total: | <u>\$23,612.22</u> |
|---------------|---------------------------|

D.01-12-017

Weil:

| | |
|--------------------|------------|
| 20.9 hours @ \$220 | \$4,598.00 |
| 10.1 hours @ \$110 | 1,111.00 |

Other:

| | |
|-------------------------|---------|
| Copies | \$77.32 |
| Postage, FAX | 86.02 |
| Parking, tolls, mileage | 61.27 |

| | |
|---------------|--------------------------|
| Total: | <u>\$5,933.61</u> |
|---------------|--------------------------|

4.1 Hours Claimed

Aglet has maintained detailed records of time spent on the proceeding. Spreadsheet summaries of hours and direct expenses are set forth in an attachment to the compensation request. Weil's time is separated into professional hours, travel and compensation request hours, and administrative hours, as shown on the spreadsheets. Aglet also appropriately breaks down time spent on various issues and activities. We find the compilation of hours claimed to be a reasonable one.

4.2 Hourly Rates

Section 1806 requires the Commission to compensate eligible parties at a rate that reflects the "market rate paid to persons of comparable training and experience who offer similar services." Aglet requests Commission approval of (1) an hourly rate of \$220 for Weil's professional work performed during the years 2000 and 2001, and (2) one half that rate for travel time and for preparation of this compensation request. The Commission has previously awarded Weil compensation at a professional rate of \$220 per hour and a travel and compensation rate of \$110 per hour for work in 2000 and 2001. (*See, e.g.*, D.00-07-015; D.00-07-046.)

4.3 Other Costs

Aglet claims a total of \$1,088.83 for costs relating to photocopying, postage, facsimile reproduction and mileage. Mileage, including travel to San Diego, is calculated at 31 cents per mile, the minimum Internal Revenue Service rate. We find this request reasonable.

5. Award

We award Aglet \$23,612.22 for contributions to D.01-05-059 and \$5,933.61 for contributions to D.01-12-017. Consistent with previous Commission

decisions, we will order that interest be paid on the award amount (calculated at the three-month commercial paper rate), commencing the 75th day after Aglet filed its compensation request for D.01-05-059 (October 1, 2001) and commencing the 75th day after the request for D.01-12-017 (April 29, 2002). Interest will continue until the utility makes full payment.

6. Waiver of Comment Period

This is a compensation matter in which the decision grants the relief requested. Accordingly, pursuant to Pub. Util. Code § 311(g)(3), the otherwise applicable 30-day review and comment period is being waived.

Findings of Fact

1. Aglet timely requests compensation for contributions to D.01-05-059 and D.01-12-017 as set forth herein.
2. Aglet requests hourly rates for professional work that have already been approved by the Commission for 2000 and 2001.
3. The miscellaneous costs incurred by Aglet in this proceeding are reasonable.

Conclusions of Law

1. Aglet has fulfilled the requirements of Pub. Util. Code §§ 1801-1812, which govern awards of intervenor compensation.
2. Aglet should be awarded \$23,612.22 for contributions to D.01-05-059 and \$5,933.61 for contributions to D.01-12-017 in this proceeding.
3. Today's order should be made effective immediately so that Aglet may be compensated without delay.

O R D E R

IT IS ORDERED that:

1. Aglet Consumer Alliance (Aglet) is awarded \$23,612.22 for substantial contributions to Decision (D.) 01-05-059 and \$5,933.61 for substantial contributions to D.01-12-017.
2. Pacific Gas and Electric Company (PG&E) shall, within 30 days of this order, pay Aglet \$23,612.22 plus interest at the rate earned on prime, three-month commercial paper as reported in the Federal Reserve Statistical Release, G.13, with interest beginning October 1, 2001, and continuing until full payment has been made. PG&E shall, within 30 days of this order, pay Aglet \$5,933.61 plus interest at the rate earned on prime, three-month commercial paper as reported in the Federal Reserve Statistical Release, G.13, with interest beginning April 29, 2002, and continuing until full payment has been made.
3. The comment period for today's decision is waived, and this proceeding is closed.

This order is effective today.

Dated _____, at San Francisco, California.